IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 350 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASSOCIATED DYESTUFFS CORP.

Versus

ADARSH PROCESSORS (P) LTD.

Appearance:

MR DN PANDYA for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 01/08/2000

C.A.V. JUDGEMENT

1. Associated Dyestuff Corporation-the petitioner herein has filed this petition under sections 433 & 434 of the Companies Act for winding up of M/s Adarsh

Processors (P) Ltd (hereinafter referred to as "the Company") having its registered office at A-2/506, Sarigam Industrial Estate, GIDC, Sarigam (Dist.Bulsar).

2. It was stated in the petition that the company is a process house and always in demand of dyes, dyestuffs, chemicals and auxiliaries of both dyestuffs and chemicals used to do business by calling upon the petitioner to supply the demands at the premises of their process house at Sarigam Industrial Estate. The petitioner has supplied goods from 2.1.1997 to 31.5.97 worth Rs.6,13,704/- and raised various necessary invoices. The petitioner addressed various letters from time to time and in the petition it was stated that the company was liable to pay Rs.5,98,704/- due and payable to the petitioner together with interest of Rs.2,08,956/-as on 31.3.1999.

3. In view of the same the petitioner addressed statutory notice dated 22.5.99 to the company demanding payment of Rs.8,07,600/-.

4. It was stated that the company by its reply, dated 322.6.99 partly admitted that they were unable to make payment due to bad market conditions. However, they had also raised dispute in its reply to the notice for the first time.

5. It was also stated that as per the search carried out in the records of the Registrar of the Companies, Gujarat ever since the incorporation of the company, no annual reports of Profit and Loss accounts and balance sheets are submitted so as to allow presenting the same before this court. It was also stated a charge over the factory of the company at Plot No.CIB/105/1,2,3 GIDC, Sarigam, Umargam, Dist.Valsad in favour of GSFC to secure term loan reduced to 26.20 lacs from original Rs.52.41 lacs has been created.

6. This present petition was filed on 20.12.1999. This court has issued notice on 24.12.1999. Thereafter, inspite of notice, nobody appeared on behalf of the company and therefore this court (Coram: A.R.Dave,J) passed order on 29.2.200 stating that the petition was already admitted on 22.1.2000 and also ordered advertisement in Indian Express, Ahmedabad & Bombay editions and Gujarat Mitra, Surat Edition and in the

Government Gazette on or before 31.3.2000 and the date of hearing was fixed on 28.4.2000. Mr.D.N.Pandya, Ld.advocate for the petitioner has filed affidavit, dated 27.4.2000 pointing out that as per the orders of this court public notices were duly published in the Govt.Gazette on 27.3.2000, Indian Express of Ahmedabad and also in Gujarat Mitra of Surat Edition on 13.4.2000. Inspite of the aforesaid public notices, nobody appeared on behalf of the company.

6.1 Section 433 of the Companies Act provides the circumstances in which the company may be wound up by court, and reads as under:

"Sec.433 Circumstances in which company may be wound up by court--A company may be wound up by the court--

(a) if the company has, by special resolution, resolved that the company may be wound up by the court;

(b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) If the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) if the number of members is reduced in the case of a public company, below seven, and in the case of a private company, below two;

(e) if the company is unable to pay its debts;

(f) if the court is of opinion that it is just and equitable that the company should be wound up;

Section 434 of the Companies Act provides for the company when deemed unable to pay its debts.

7. I have gone through the papers of the case and I am of the view that the expression "unable to pay its debts" should be taken in the commercial sense of being unable to meet current demands. Looking to the facts and

circumstances of the case, the company was neither in position to discharge its debts or to generate funds nor had placed any scheme before this court for improvement of its workings. This court had no other option but to order winding up of the company. I am of the view that failure on the part of the debtor company to pay the creditor would create a presumption of insolvency against the company. I am of the view that when the company has not filed its balance sheets and the fact that a charge over the factory of the company in favour of GSFC has created and the GSFC has taken over the charge over the property to secure term loan reduced to Rs.26.20 lacs from original Rs.52.41 lacs shows that there is a commercial insolvency on the part of the company. I am of the view that when no accounts were prepared and filed and no business was carried on for over a year the petitioner had made out a case of inability to pay debts. The company has chosen not to file any reply to the notice issued by this court and also chose not to appear before the court even after advertisement of the petition and this fact shows that the company has no defence in the eye of law. I am of the view the expression "neglects to pay the sum demanded" in section 434(1)(a) is not equivalent to the word "omitted". Neglect to pay a debt on demand is omission to pay without reasonable cause. I am of the view that failure to pay inspite of several communications including service of statutory notice was held to be evidence of neglect and inability.

8. I am of the view that looking to the facts and circumstances of the case that since the company has not produced balance sheets for several years and entire charge of the property of the company has been taken over by GSFC, the company should no longer be allowed to continue in the eye of law. I am of the view that there is no possibility of promoting the business of the company and this is a proper case for winding up of the company on the just and equitable grounds also. I am also of the view that the substratum of the company has gone and it is very difficult for the company to carry on its business more particularly in view of the fact that the GSFC has taken over the charge of the assets of the company.

9. For the aforesaid reasons M/s Adarsh Processors (P) Ltd-the respondent-company is hereby ordered to be wound up.

1.8.2000 (K.M.MEHTA,J)